

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
SECRETARIAT

2014 SEP 18 AM 10:22

**FEDERAL ELECTION COMMISSION**  
999 E Street, N.W.  
Washington, D.C. 20463

**SENSITIVE**  
FEDERAL ELECTION  
COMMISSION

2014 SEP 17 PM 4:35

**FIRST GENERAL COUNSEL'S REPORT**

**CELA**

MUR: 6826  
DATE COMPLAINT FILED: May 21, 2014  
DATE OF NOTIFICATION: May 28, 2014  
RESPONSES RECEIVED: June 18, 2014  
June 20, 2014  
DATE OF ACTIVATION: July 2, 2014  
  
ELECTION CYCLE: 2014  
EXPIRATION OF SOL: Earliest: May 2019  
Latest: May 2019

**COMPLAINANT:**

John D. Seaman

**RESPONDENTS:**

Sanje Sedera

Committee to Elect Sanje Sedera

Malraj de Silva

**RELEVANT STATUTES  
AND REGULATIONS:**

52 U.S.C. § 30101(8)<sup>1</sup>  
52 U.S.C. § 30104  
52 U.S.C. § 30121  
8 U.S.C. § 1101(a)(20)  
22 U.S.C. § 611(b)  
11 C.F.R. § 100.52(d)(1)  
11 C.F.R. § 110.20

**INTERNAL REPORTS CHECKED:**

Disclosure Reports

**FEDERAL AGENCIES CHECKED:**

None

<sup>1</sup> On September 1, 2014, the Federal Election Campaign Act of 1971, as amended, (the "Act") was transferred from Title 2 to new Title 52 of the United States Code.

140044664119

1 **I. INTRODUCTION**

2 This matter was generated by a complaint alleging that Sanje Sedera, a candidate for state  
3 office in Nevada, received an in-kind contribution from a foreign national in violation of the  
4 Act's foreign national prohibition.<sup>2</sup> That allegation is based entirely on certain facts recited in a  
5 post in the *Asian Tribune*, an online media publication, concerning a fundraiser for Sedera that  
6 was held at the residence of Malraj de Silva. The post described de Silva as the "Sri Lanka  
7 General Consul for the US Western States."<sup>3</sup> From this, the Complaint concludes that de Silva is  
8 a foreign national and, consequently, that he made and Sedera's authorized state committee  
9 accepted a prohibited in-kind contribution from a foreign national when de Silva hosted the  
10 fundraiser at his home.<sup>4</sup>

11 Sanje Sedera and the Committee submitted a joint response, and Malraj de Silva  
12 submitted a separate response.<sup>5</sup> The Respondents admit that de Silva held a fundraiser for  
13 Sedera, but deny that doing so gives rise to any violation of the Act. Each Respondent further  
14 represents that de Silva is not and has never been the General Consul of Sri Lanka, is a United  
15 States citizen, and as a citizen may lawfully make contributions to local, state, and federal  
16 elections.<sup>6</sup>

17 As described below, Malraj de Silva does not appear to be a foreign national.  
18 Accordingly, we recommend that the Commission find no reason to believe that de Silva made

---

<sup>2</sup> 52 U.S.C. § 30121(a) (formerly 2 U.S.C. § 441(a)).

<sup>3</sup> Daya Gamage, *Sanje Sedera Candidacy for Nevada Legislature Gathers Momentum*, ASIAN TRIBUNE (May 8, 2014) [hereinafter, Gamage, *Sedera Candidacy*], <http://www.asiantribune.com/node/79412>.

<sup>4</sup> Sedera's authorized state campaign committee is the Committee to Elect Sedera (the "Committee"), a Respondent in this matter.

<sup>5</sup> Sedera Resp. at 1 (Jun. 18, 2014); De Silva Resp. at 1 (Jun. 20, 2014).

<sup>6</sup> Sedera Resp. at 1; De Silva Resp. at 1.

or that Sedera or the Committee accepted a prohibited contribution in violation of 52 U.S.C. § 30121(a) (formerly 2 U.S.C. § 441e(a)).

## II. FACTUAL BACKGROUND AND ANALYSIS

### A. Facts

In 2014, Sanje Sedera was a candidate for Nevada State Assembly District 34. In connection with his candidacy, Sedera was required to file a financial disclosure form and periodic disclosure reports with the office of the Nevada Secretary of State, which it maintains in a publicly accessible online database.<sup>7</sup> According to those filings, Sedera received \$2,150 in small contributions on May 3, 2014, the date of the fundraiser.<sup>8</sup>

De Silva's response states that he is not and has never been the Consul General for Sri Lanka.<sup>9</sup> De Silva's response further asserts that he would inform the *Asian Tribune* of its factual error and requesting that it publish a correction.<sup>10</sup> De Silva notes that as a United States citizen, he is entitled to participate in lawful activities, including hosting fundraisers for persons in contested elections.<sup>11</sup> Sedera's filings with the State of Nevada do not reflect that de Silva made

<sup>7</sup> See NEVADA SECRETARY OF STATE, <http://nvsos.gov/SoSCandidateServices/AnonymousAccess/CEFDSearchUU/CandidateDetails.aspx?o=ZgZY2gCHxDXO%252bU7AdR51tQ%253d%253d> (last visited Sept. 5, 2014).

<sup>8</sup> See Sanje Sedera, Contributions & Expenses Rpt. at 3 (May 20, 2014), available at <http://nvsos.gov/SoSCandidateServices/AnonymousAccess/ViewCCEReport.aspx?syn=NGeFRka%252fyAxldYrT4OWqgg%253d%253d>.

<sup>9</sup> De Silva Resp. at 1. De Silva acknowledges that the Ministry of External Affairs of Sri Lanka has approached him about the possibility of becoming the next Consul General of Sri Lanka of Los Angeles, but claims that he has not decided whether he would accept such a position. *Id.* at 1.

<sup>10</sup> *Id.* To date, no such correction has been made. See Gamage, *Sedera Candidacy*, *supra*. Concerning its editorial policy, the *Asian Tribune* states that "Content authors or editors are not responsible for the correctness of the information they provide . . . and the site is not to be held responsible for lapses or mistakes." *Disclaimer*, ASIAN TRIBUNE (Aug. 21, 2009), <http://www.asiantribune.com/node/19388>.

<sup>11</sup> De Silva previously contributed to Ed Royce, a House candidate for California's 40th Congressional District. As such, de Silva may have been required to affirm or provide documentation to demonstrate that he was not a foreign national and was eligible to make contributions in a federal election. See 11 C.F.R. § 110.20.

any contribution, in-kind or otherwise, to Sedera in connection with the May 3, 2014 fundraiser hosted in his home or at any other time.

**B. Analysis**

A contribution is any gift, subscription, loan, advance, or anything of value made by any person for the purpose of influencing any election for federal office.<sup>12</sup> Commission regulations define "anything of value" to include in-kind contributions, that is, the provision of goods or services without charge or at a charge that is less than the usual and normal charge.<sup>13</sup>

It is unlawful for "a foreign national, directly or indirectly, to make . . . a contribution or donation of money or other thing of value, or to make an express or implied promise to make a contribution or donation, in connection with a Federal, State, or local election."<sup>14</sup> It is also impermissible for "a person to solicit, accept, or receive a contribution or donation" from a foreign national.<sup>15</sup> Even if a person lacks actual knowledge of the foreign national status of a potential contributor, that person will have "knowingly" accepted a prohibited foreign national contribution if he is aware of facts that would lead a reasonable person "to conclude that there is a substantial probability that the source of the funds solicited, accepted or received is a foreign national" or "to inquire whether the source of the funds . . . is a foreign national" without conducting such an inquiry.<sup>16</sup> The prohibition against contributions by foreign nationals does not

---

<sup>12</sup> 52 U.S.C. § 30101(8)(a)(1) (formerly 2 U.S.C. § 431).

<sup>13</sup> 11 C.F.R. § 100.52(d)(1).

<sup>14</sup> 52 U.S.C. § 30121(a)(1) (formerly 2 U.S.C. § 441e(a)(1)).

<sup>15</sup> *Id.* § 30121(a)(2) (formerly 2 U.S.C. § 441e(a)(2)).

<sup>16</sup> 11 C.F.R. § 110.20(a)(4)(ii)-(iii).

1 apply to an individual who is a citizen of the United States or lawfully admitted for permanent  
2 residence in the United States.<sup>17</sup>

3 The Complaint contends that de Silva is the Sri Lankan Consul General based exclusively  
4 on the representation in an online summary of the fundraiser, which referred to de Silva as the  
5 "Sri Lanka General Consul for the US Western States."<sup>18</sup> The Complaint concludes from that  
6 assertion that de Silva must be a foreign national and, as such, that de Silva and Sedera violated  
7 the prohibition against foreign national contributions when de Silva hosted the fundraiser in his  
8 home on behalf of Sedera.<sup>19</sup>

9 As noted, Respondents expressly deny that de Silva is a foreign national and further  
10 claim that the characterization of him as Consul General is mistaken.<sup>20</sup> Certain publicly  
11 available information tends to support de Silva's representations concerning his citizenship  
12 status. For instance, de Silva appears to work for the County of Los Angeles, which requires  
13 employees to be either United States citizens or lawful permanent residents.<sup>21</sup>

14 Additionally, public information indicates that the post of Consul General of Sri Lanka in  
15 Los Angeles has been unoccupied since July 2013 and, consistent with de Silva's representation

<sup>17</sup> See 52 U.S.C. § 30121(b) (formerly 2 U.S.C. § 441e(b)) (providing that "the term 'foreign national' shall not include any individual who is a citizen of the United States" or an individual who is "lawfully admitted for permanent residence"); see also FEC, FOREIGN NATIONALS at 2 (July 2003), [http://www.fec.gov/pages/brochures/foreign\\_nat\\_brochure.pdf](http://www.fec.gov/pages/brochures/foreign_nat_brochure.pdf) (describing "green card" exception to foreign nationals prohibition applicable to lawful permanent alien residents).

<sup>18</sup> Gamage, *Sedera Candidacy* at 1, *supra*.

<sup>19</sup> Compl. at 1.

<sup>20</sup> Sedera Resp. at 1; De Silva Resp. at 1.

<sup>21</sup> See L.A. CNTY., EMP'T APPLICATION, Question 12, available at [http://file.lacounty.gov/dhr/EmploymentApplication\\_062014.pdf](http://file.lacounty.gov/dhr/EmploymentApplication_062014.pdf).

1 in his Response, de Silva has not at any time assumed that post.<sup>22</sup> Finally, contrary to the  
2 underlying assumption in the Complaint, even if de Silva held the position of General Consul it  
3 would not be *prima facie* evidence that he is a foreign national; the position is a bureaucratic  
4 office that need not be held exclusively by a citizen of the country represented by the Consulate  
5 office.<sup>23</sup>

6 Given that the Complaint's assertion that de Silva is a foreign national is derived from an  
7 unsupported factual inference that the Respondents directly deny and which is inconsistent with  
8 other information concerning de Silva's status, we see no reasonable basis on this record to  
9 conclude that de Silva may have provided a prohibited foreign national contribution to Sedera in  
10 violation of the Act.<sup>24</sup> Accordingly, we recommend that the Commission find no reason to  
11 believe that Sedera and the Committee accepted a prohibited in-kind contribution or that Malraj

<sup>22</sup> The former Consul General in California was Dr. Hector Weerasinghe, who held the position for two years before his retirement in July 2013. See <http://www.srilankaconsulatela.com> (last visited Sept. 15, 2014). The Vice Consul is Sandara Marakkala Mahesh Kumara, who has held the position since December 2, 2010. See U.S. DEP'T OF STATE, FOREIGN CONSULAR OFFICES IN THE UNITED STATES (Feb. 5, 2014), <http://www.state.gov/documents/organization/221620.pdf>.

<sup>23</sup> See Preface, FOREIGN CONSULAR OFFICES, *supra*.

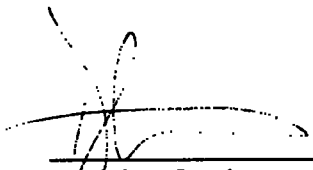
<sup>24</sup> The Complaint also states that the *Asian Tribune* article reflects that de Silva "admitted that the Sri Lanka government would be assisting Sedera by sending former Sri Lanka military personnel to travel to Las Vegas, Nevada in mid-May to campaign for Sedera." Compl. at 1. In fact, the online piece states that "Former Sri Lankan military personnel were seen in large numbers joining their former Army colleague Malraj de Silva in support of Sanje Sedera candidacy." Gamage, *Sedera Candidacy*, *supra*. In his Response, Sedera states that certain former Sri Lankan military personnel — "all of them US Citizens" — "expressed willingness to come to Las Vegas, Nevada to campaign on my behalf." Sedera Resp. at 1. As with the allegation concerning de Silva's foreign national status, the Complaint provides no basis to conclude that other individuals possibly formerly associated with the Sri Lankan military were "foreign nationals" under the Act, even assuming any such persons made contributions, directly or in-kind, to Sedera.

de Silva made a prohibited in-kind contribution in violation of 52 U.S.C. § 30121(a) (formerly 2 U.S.C. § 441e(a)).

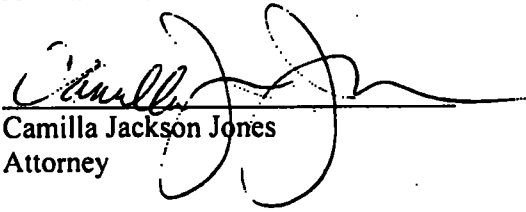
### III. RECOMMENDATIONS

- (1) Find no reason to believe that Sanje Sedera and the Committee to Elect Sanje Sedera accepted a prohibited in-kind contribution in violation of 52 U.S.C. § 30121(a)(2) (formerly 2 U.S.C. § 441e(a)(2)).
- (2) Find no reason to believe that Malraj de Silva made a prohibited in-kind contribution in violation of 52 U.S.C. § 30121(a)(1) (formerly 2 U.S.C. § 441e(a)(1)).
- (3) Approve the attached Factual and Legal Analysis.
- (4) Approve the appropriate letters; and
- (5) Close the file.

9/17/14  
Date

  
Daniel A. Petalas  
Associate General Counsel  
For Enforcement

  
Mark Shonkwiler  
Assistant General Counsel

  
Camilla Jackson Jones  
Attorney